

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MAYLINE E. BORRERO FERNANDEZ,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

16-cv-4533 (NSR)(PED)

ORDER ADOPTING REPORT  
AND RECOMMENDATION

NELSON S. ROMÁN, United States District Judge:

Mayline E. Borrero Fernandez ("Plaintiff"), proceeding *pro se*, seeks review under 42 U.S.C. § 405(g) of a decision by the Commissioner of Social Security ("Defendant") denying her application for social security income ("SSI"). Plaintiff and Defendant filed cross-motions for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). (ECF Nos. 10 and 13). Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), this case was referred to Magistrate Judge Paul E. Davison ("Judge Davison"). On August 30, 2017, Judge Davison issued a Report and Recommendation ("R&R"), recommending that Defendant's motion be granted and Plaintiff's cross-motion be denied. (ECF No. 14) For the following reasons, the Court adopts Judge Davison's R&R in its entirety.

**BACKGROUND**

Plaintiff seeks judicial review of a decision by the Commissioner of Social Security. The Court assumes familiarity with the underlying facts and prior proceedings in this case, as set forth in the R&R. Plaintiff timely commenced the instant action after the Appeals Council denied her request for review of an Administrative Law Judge's ("ALJ") determination that denied her

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benefits. Plaintiff commenced this action on June 15, 2016. (ECF No. 2.). On October 24, 2016, Defendant moved for judgment on the pleadings on the basis the administrative record supports the ALJ's finding that Plaintiff is not disabled, and, therefore not eligible for SSI. On May 18, 2017, Plaintiff filed her opposition to Defendant's motion and cross-moved to set aside the denial of benefits.

On August 30, 2017, Judge Davison issued the R&R recommending, *inter alia*, that this Court grant Defendant's motion for judgment on the pleading and deny Plaintiff's motion.

### STANDARD OF REVIEW

A magistrate judge may "hear a pretrial matter dispositive of a claim or defense" if so designated by a district court. *See* Fed. R. Civ. P. 72(b)(1); *accord* 28 U.S.C. § 636(b)(1)(B). In such a case, the magistrate judge "must enter a recommended disposition, including, if appropriate, proposed findings of fact." Fed. R. Civ. P. 72(b)(1); *accord* 28 U.S.C. § 636(b)(1). Where a magistrate judge issues a report and recommendation,

[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1); *accord* Fed. R. Civ. P. 72(b)(2), (3). However, "[t]o accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *accord Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008) ("[F]ailure to object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision.") (quoting *Small v. Sec. of HHS*, 892 F.2d 15, 16 (2d Cir. 1989); *see also* Fed. R. Civ. P. 72 advisory committee note (1983 Addition, Subdivision (b)) ("When no timely objection

is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

### **DISCUSSION**

Here, neither party has filed an objection to the R&R issued by Judge Davison. Accordingly, the Court reviews the R&R for clear error.

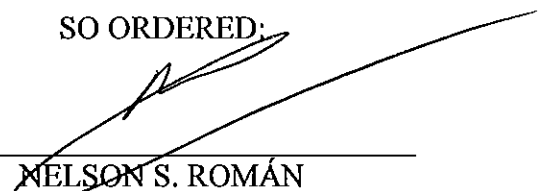
The Court finds no error on the face of the R&R, and adopts Judge Davison’s recommendation in its entirety. Judge Davison properly reviewed the administrative record, noted that the ALJ applied the requisite five-step inquiry used for determining disability, observed that due deference was properly accorded to Plaintiff’s treating physician, and found that the ALJ’s conclusion was supported by substantial evidence. Despite determining that Plaintiff suffered from several disabilities, including a mental disability, evidence supported the ALJ’s finding that one or more of Plaintiff’s condition did not rise to the requisite level as defined by statute to warrant the granting of benefits, and some conditions improved with medication, such that she was able to function and not precluded from all work activity.

### **CONCLUSION**

For the reasons stated above, this Court adopts Judge Davison’s R&R in its entirety. Defendant’s motion for judgment on the pleadings is GRANTED and Plaintiff’s cross-motion is DENIED. The Clerk of Court is respectfully directed to terminate the motions (ECF Nos. 10 and 13), enter judgment in favor of the Defendant and to close this case accordingly.

Dated: September 26, 2017  
White Plains, New York

SO ORDERED:



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NELSON S. ROMÁN  
United States District Judge